

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

THE TRANSPARENCY PROJECT, §
§
Plaintiff, § CIVIL ACTION No. 4:21-cv-121
§
v. §
§
U.S. DEPARTMENT OF JUSTICE, et al., § JUDGE SEAN D. JORDAN
§
Defendants. §

**DEFENDANTS' FIRST AMENDED ANSWER
AND AFFIRMATIVE DEFENSES**

Defendants, the United States Department of Justice (“DOJ”), the National Security Agency (“NSA”), the Federal Bureau of Investigation (“FBI”), the Central Intelligence Agency (“CIA”), and the Office of the Director of National Intelligence (“ODNI”), hereby answer the numbered paragraphs of the First Amended Complaint [ECF 8], as follows:

I.
JURISDICTION AND VENUE

1. This paragraph contains Plaintiff's conclusions of law regarding jurisdiction, to which no response is required.
2. This paragraph contains Plaintiff's conclusions of law regarding venue, to which no response is required.¹

¹ IRS and Texas Comptroller records appear to demonstrate that Plaintiff The Transparency Project may actually be incorporated in a county outside the Sherman Division, potentially making venue improper.

II.
PARTIES

3. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

4. Defendant DOJ admits the first and third sentences of this paragraph. The second sentence consists of Plaintiff's legal conclusions, to which no response is required.

5. Defendant NSA admits the first and third sentences of this paragraph. The second sentence consists of Plaintiff's legal conclusions, to which no response is required.

6. Defendant FBI admits the first and third sentences of this paragraph. The second sentence consists of Plaintiff's legal conclusions, to which no response is required.

7. Defendant CIA admits the first and third sentences of this paragraph. The second sentence consists of Plaintiff's legal conclusions, to which no response is required.

8. Defendant ODNI admits the first and third sentences of this paragraph. The second sentence consists of Plaintiff's legal conclusions, to which no response is required.

9. Defendant Department of Justice ("DOD") has not been properly served and is not properly before this Court.

III.
STATEMENT OF FACTS

10. Defendants admit that Plaintiff submitted a Freedom of Information Act (“FOIA”) request dated July 22, 2020, to multiple entities. Defendants respectfully refer the Court to this request for a complete and accurate statement of its contents and deny any allegations inconsistent with it. Defendant DOJ avers that the Office of Inspector General (“OIG”) acknowledged receipt of this request by letter dated July 24, 2020. Defendant DOJ admits that OIG has not yet produced records. Defendant DOJ avers that the Office of Information Policy (“OIP”) acknowledged receipt of this request by letter dated August 6, 2020.² Defendant DOJ admits that OIP has not yet issued a final response. Defendant DOJ denies that the Executive Office of United States Attorneys (“EOUSA”) received this request. Defendant NSA avers that it issued a final response dated August 18, 2020, and an appeal response letter dated February 16, 2021. Defendant DOJ admits that the National Security Division (“NSD”) received this request. Defendant FBI admits that it received this request. Defendant CIA admits that it received this request. Defendant ODNI avers that it acknowledged receipt of this request by letter dated August 3, 2020.

11. Defendants admit that Plaintiff submitted a FOIA request dated July 22, 2020, to multiple entities. Defendants respectfully refer the Court to this request for a complete

² OIP’s Initial Request Staff is responsible for processing FOIA requests for records within OIP and from six senior leadership offices of the Department of Justice, specifically the Offices of the Attorney General (OAG), the Deputy Attorney General (ODAG), and the Associate Attorney General (OASG), and the Offices of Legislative Affairs (OLA), Legal Policy (OLP), and Public Affairs (PAO). OIP is also responsible for processing requests for records of John Durham’s Office of Special Counsel (SCO).

and accurate statement of its contents and deny any allegations inconsistent with it.

Defendant DOJ avers OIG acknowledged receipt of this request by letter dated July 24, 2020. Defendant DOJ avers that OIP acknowledged receipt of this request by letter dated August 12, 2020. Defendant DOJ admits that OIP has not yet issued a final response. Defendant NSA admits that NSA has not yet produced records. Defendant DOJ admits that NSD received this request. Defendant FBI admits that it received this request. Defendant CIA admits that it received this request. Defendant ODNI avers that it acknowledged receipt of this request by letter dated August 3, 2020.

12. Defendants admit that Plaintiff submitted a FOIA request dated July 24, 2020, to multiple entities. Defendants respectfully refer the Court to this request for a complete and accurate statement of its contents and deny any allegations inconsistent with it. Defendant DOJ avers that OIG acknowledged receipt of this request by letter dated July 28, 2020. Defendant DOJ admits OIG has not yet produced records. Defendant DOJ avers that OIP acknowledged receipt of this request by letter dated August 14, 2020. Defendant DOJ avers that OIP issued a final response on February 9, 2021. Defendant DOJ admits that EOUSA received this request and has not yet produced documents.

13. Defendants admit that Plaintiff submitted a FOIA request dated August 25, 2020, to multiple entities. Defendants respectfully refer the Court to this request for a complete and accurate statement of its contents and deny any allegations inconsistent with it. Defendant DOJ avers that OIG acknowledged receipt of this request by letter dated August 26, 2020. Defendant DOJ admits that OIG has not yet produced records. Defendant DOJ denies that OIP received the request. Defendant DOJ denies that EOUSA

received the request, as EOUSA is not one of the components listed on the request. Defendant NSA admits that it received the request. Defendant DOJ admits that NSD received this request. Defendant FBI admits that it received this request. Defendant CIA admits that it received this request. Defendant ODNI admits that it received this request.

14. Defendants admit that Plaintiff submitted a renewed FOIA request dated August 26, 2020, to multiple entities. Defendants respectfully refer the Court to this request for a complete and accurate statement of its contents and deny any allegations inconsistent with it. Defendant DOJ admits that this is a renewal of an earlier request and that OIG has not yet produced records. Defendant DOJ avers that OIP issued a final response on September 16, 2020, informing Plaintiff that OIP was administratively closing this request as duplicative of the request described in Paragraph 9 of the Complaint. Defendant DOJ avers that EOUSA issued a final response on November 10, 2020. Defendant NSA avers that it issued a response letter dated September 1, 2020. Defendant DOJ admits that NSD received this request. Defendant FBI admits that it received this request. Defendant CIA admits that it received this request. Defendant ODNI is unable to admit or deny whether it received this request.

15. Defendant ODNI admits that Plaintiff submitted a renewed FOIA request dated November 25, 2020, to ODNI. Defendant ODNI respectfully refers the Court to this request for a complete and accurate statement of its contents and denies any allegations inconsistent with it. Defendant ODNI admits that it has received this request.

16. Regarding the first sentence, the referenced document speaks for itself, and Defendants refer the Court to the document for a full and accurate statement of its content

and deny any allegations inconsistent with it. Defendants admit that Plaintiff submitted a FOIA request dated January 25, 2021, to multiple entities. Defendants respectfully refer the Court to this request for a complete and accurate statement of its contents and deny any allegations inconsistent with it. Defendant NSA admits that it issued a final response on March 5, 2021, and Plaintiff appealed the response on March 22, 2021. Defendant FBI admits it received this request. Defendant CIA admits that it received this request. Defendant ODNI admits that it received this request.

17. Regarding the first sentence, the referenced video speaks for itself, and Defendants refer the Court to the video for its full and accurate content and deny any allegations inconsistent with it. Defendants admit that Plaintiff submitted a FOIA request dated January 26, 2021, to multiple entities. Defendants respectfully refer the Court to this request for a complete and accurate statement of its contents and deny any allegations inconsistent with it. Defendant FBI admits it received this request. Defendant DOJ admits that NSD received this request. Defendant DOJ avers that OIP acknowledged receipt of this request by letter dated February 11, 2021. Defendant DOJ admits that OIP has not yet issued a final response. Defendant DOJ avers that OIG acknowledged receipt of this request by letter dated January 27, 2021. Defendant DOJ admits that OIG has not yet produced records. Defendant DOJ admits that EOUSA received this request and that no responsive documents have been produced. Defendant DOJ admits that the Criminal Division (CRM) received this request and avers that this request has been closed.

18. Defendants admit that Plaintiff submitted a FOIA request dated February 2, 2021, to multiple entities. Defendants respectfully refer the Court to this request for a

complete and accurate statement of its contents and deny any allegations inconsistent with it. Defendant FBI admits it received this request. Defendant DOJ avers that OIG acknowledged receipt of this request by letter dated February 4, 2021. Defendant DOJ admits that OIG has not yet produced records. Defendant DOJ admits that EOUSA received this request and that no responsive documents have been produced.

19. Defendants admit that Plaintiff submitted a FOIA request dated February 18, 2021, to multiple entities. Defendants respectfully refer the Court to this request for a complete and accurate statement of its contents and deny any allegations inconsistent with it. Defendant NSA admits it received this request and that no responsive documents have been provided. Defendant FBI admits it received this request. Defendant CIA admits that it received this request. Defendant DOJ admits that NSD received this request. Defendant DOJ avers that OIP acknowledged receipt of this request by letter dated February 16, 2021. Defendant DOJ admits that OIP has not yet issued a final response. Defendant DOJ avers that OIG acknowledged receipt of this request by letter dated February 18, 2021. Defendant DOJ admits that OIG has not yet produced records. Defendant DOJ admits that EOUSA received this request and that no responsive documents have been produced. Defendant DOJ avers that the Civil Rights Division (CRT) issued a determination letter to the requestor by letter dated March 19, 2021, which was upheld on appeal to OIP by letter dated March 30, 2021. Defendant ODNI admits that it received this request.

COUNT I

20. Defendants incorporate by reference their responses to ¶¶ 1 through 19 as though set forth in full herein.

21. This paragraph sets forth conclusions of law to which no response is necessary. To the extent a response is deemed necessary, Defendants deny Paragraph 15 in its entirety.

REQUEST FOR RELIEF

22. This paragraph sets forth Plaintiff's request for relief to which no response is necessary. To the extent that any portion of this paragraph is deemed to contain an allegation of fact or a response is deemed necessary, Defendants deny that Plaintiff is entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

1. Plaintiff is not entitled to compel the production of records or information exempt from disclosure under FOIA. *See* 5 U.S.C. § 552(b).

2. Plaintiff is not entitled to remedies beyond what is provided for in the FOIA. *See* 5. U.S.C. § 552.

3. Plaintiff has failed to properly exhaust administrative remedies.

4. Venue is improper.

Respectfully submitted,

NICHOLAS J. GANJEI

ACTING UNITED STATES ATTORNEY

/s/ *Andrea L. Parker*

ANDREA L. PARKER

Assistant United States Attorney

Texas Bar No. 00790851

550 Fannin St., Suite 1250

Beaumont, Texas 77701-2237

Tel: (409) 839-2538

Fax: (409) 839-2643

Email: andrea.parker@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2021, a true and correct copy of the foregoing document was filed electronically with the court and has been sent to counsel of record via the court's electronic filing system.

/s/ *Andrea L. Parker*

ANDREA L. PARKER

Assistant United States Attorney